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*United States Attorney
Southern District of New York*

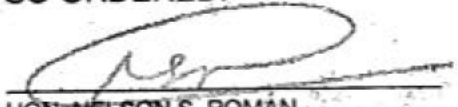
*United States District Courthouse
300 Quarropas Street
White Plains, New York 10601*

April 6, 2022

The Court has considered the Government's arguments contained in this letter motion. The Court DENIES the Government's request. The Clerk of Court is kindly directed to terminate the motion at ECF No. 80.

DATED: April 7, 2022

White Plains, NY **SO ORDERED:**


HON. NELSON S. ROMAN
UNITED STATES DISTRICT JUDGE

BY ECF

The Honorable Nelson S. Román
United States District Judge
Southern District of New York
300 Quarropas Street
White Plains, New York 10601

Re: *United States v. Myron Wagner, 20 Cr. 410 (NSR)*

Dear Judge Román:

The Government respectfully writes to request an instruction from the Court to the defense with respect to Federal Rule of Evidence 801(d)(1)(A). At today's proceeding, the defendant offered portions of Government Exhibit 502 (Officer Muscente's body camera recording the defendant's arrest) in which the defendant made statements claiming not to have committed any crime. The bar on hearsay forbids a defendant from offering his own out-of-court statement for the truth of the matter asserted. *See* Fed. R. Evid. 801 & 802; e.g., *United States v. Yousef*, 327 F.3d 56, 153 (2d Cir. 2003) ("[W]hile the Government was free to introduce the statement as an admission by a party-opponent, [the defendant] had no right to introduce it on his own."); *United States v. Black*, 2014 WL 5783067, at *2 (E.D.N.Y. Nov. 5, 2014) ("[T]he purportedly exculpatory statements the defendant made to law enforcement agents in the course of his arrest . . . would be hearsay if introduced by the defendant, and no exception exists for the defendant to admit such statements."). The Government therefore believes the statements were offered for some non-hearsay purpose,¹ meaning that the defendant cannot use them to argue for the truth of the matter asserted—the claim that he did not commit any crime. The Government therefore respectfully requests that the Court direct the defendant not to offer any argument during summations that he asserted his innocence when arrested.

Respectfully submitted,

DAMIAN WILLIAMS
United States Attorney

by: /s/
Shiva H. Logarajah / Nicholas S. Bradley
Assistant United States Attorneys

¹ In offering the exhibit, the defendant claimed that the video was probative to showing that Officer Muscente did not observe the defendant coming out of the barbershop, and to "corroborate[] the witness' testimony." (Tr. 163). Once he obtained admission of the exhibit, however, the defendant made no effort to explore either point. (Tr. 164-82). In any event, the defendant's false exculpatory statements do not relate to either ostensible purpose.

MEMO ENDORSED